IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.MC.No. 3039 of 2007()

CC.863/2003 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED NO.4:

REKHA MATHEW, D/O. SRI.C.M.MATHAI,
8/146, CHIRAKANDATHIL, MASJID ROAD, ALUVA.

BY ADV. SRI.JACOB MATHEW MANALIL
SMT.P.PRIYA

RESPONDENTS: DEFACTO COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. DEEPTHI G.,
'VASANDHAM', OLAVYPU, POOCHAKEL P.O.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3039 of 2007

Dated this the 3rd day of October 2007

O R D E R

The petitioner, an unmarried woman, faces indictment for the offences punishable under Section 420 I.P.C. The crime was registered in 2002. Investigation is complete. Final report has already been filed. Cognizance has been taken as C.C.No.863/03. The petitioner has already appeared before the learned Magistrate. She has been enlarged on bail. The petitioner has now come to this court on 1/10/2007 with the prayer that the case against her may be quashed.

2. What is the ground? The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The allegations against the petitioner are unsustainable. A complaint was filed by the de facto complainant before the learned Magistrate and the same was referred to the police under Section 156(3) Cr.P.C. It is on such crime that the investigation was conducted and the final report was filed. In these circumstances, it is prayed that the powers under Section 482 Cr.P.C may be invoked and the proceedings against the petitioner may be quashed.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction which I am called upon to invoke and exercise. In a calendar case registered as early as in 2003, this court is being requested in 2007 to invoke the powers under Section 482 Cr.P.C. Absolutely no satisfactory explanation is offered as to why the petitioner had not come to this court earlier. The learned counsel for the petitioner submits that the case has not made any further progress and it is in these circumstances that the petitioner is constrained to come before this court with this request for premature termination of proceedings.

4. The Code of Criminal Procedure provides for premature termination of prosecutions even when such prosecution is initiated on the basis of a final report submitted by the police. Section 239/240 Cr.P.C speak of the procedure which is available to an indictee who feels that the indictment against him is groundless. It is submitted that charges have not been framed so far. It is for the petitioner to make a request to the learned Magistrate to consider her plea for discharge under Section 239/240 Cr.P.C. The learned Magistrate must consider

such plea. In every case where premature termination of proceedings under Section 239/240 Cr.P.C is a possibility, it is not necessary for this court to invoke the powers under Section 482 Cr.P.C,. Ordinarily and normally It is for the learned Magistrate concerned to consider the plea of discharge under Section 239/240 Cr.P.C and bring about premature termination of proceedings if the indictee does not deserve to stand the trauma of further proceedings. The plea under Section 239 Cr.P.C when raised has to be considered alertly by the learned Magistrate.

5. The learned counsel for the petitioner submits that insistence on personal appearance of the petitioner causes unnecessary trauma for the petitioner. I fail to understand why the petitioner must appear before the learned Magistrate on all dates of posting. She can claim to be represented by a counsel. Until the decision of plea of discharge under Section 239/240 Cr.P.C, I direct that the personal presence of the petitioner need not be insisted by the learned Magistrate. If and only if the learned Magistrate feels that the charges are liable to be framed against the petitioner need the personal presence of the

petitioner be insisted. Till then, the petitioner shall be permitted to enter appearance and conduct the proceedings through her counsel.

6. With the above observations, this Criminal Miscellaneous Case is dismissed. I need only mention that I expect the learned Magistrate to consider the plea of discharge under Section 239/240 Cr.P.C without insisting on the personal presence of the petitioner as expeditiously as possible, at any rate, within a period of two months from the date on which a copy of this order is placed before the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007